SERVED: March 28, 1995

NTSB Order No. EA-4340

UNITED STATES OF AMERICA
NATIONAL TRANSPORTATION SAFETY BOARD
WASHINGTON, D.C.

Adopted by the NATIONAL TRANSPORTATION SAFETY BOARD
at its office in Washington, D.C.
on the 27th day of March, 1995

DAVID R. HINSON, Administrator, Federal Aviation Administration, Complainant, v. MICHAEL P. GOUGH, Respondent.	)	Docket SE-13958

OPINION AND ORDER

The respondent, pro se, has appealed from the oral initial decision Administrative Law Judge Patrick G. Geraghty rendered in this proceeding on February 22, 1995, at the conclusion of an evidentiary hearing.[1] By that decision the law judge affirmed an emergency order of the Administrator revoking all pilot certificates held by respondent, including commercial pilot

[1]An excerpt from the hearing transcript containing the initial decision is attached.

certificate No. 204362289, for his alleged violations of sections 61.3(a) and 91.13(a) of the Federal Aviation Regulations, "FAR," 14 CFR Parts 61 and 91.[2] For the reasons discussed below, the appeal is denied.

The Administrator's January 18, 1995 order, which serves as the complaint in this matter, alleges, among other things, that respondent served as pilot-in-command of an aircraft on six occasions (four of them passenger-carrying)[3] when his pilot certificate was suspended and when he did not have in his possession a valid medical certificate.[4] It also alleged that

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[2]FAR sections 61.3(a) and 91.13(a) provide, in pertinent part, as follows:

> § 61.3 **Requirement for certificates, rating, and authorizations.**
>
> (a) Pilot certificate. No person may act as pilot in command or in any other capacity as a required pilot flight crewmember of a civil aircraft of United States registry unless he has in his personal possession a current pilot certificate issued to him under this part....
>
> § 91.13 **Careless or reckless operation.**
>
> (a) *Aircraft operations for the purpose of air navigation.* No person may operate an aircraft in a careless or reckless manner so as to endanger the life or property of another.

[3]The flights, all of which originated or terminated in the State of Oregon, occurred on November 6, 12, 13, 15 and December 26, 1994, and on January 12, 1995.

[4]In this connection, the emergency order recited that pursuant to a June 2[8], 1994 order, respondent's commercial pilot certificate had been suspended for 90 days, his ground instructor certificate had been suspended for 60 days, and his medical certificate had been revoked. The order, which was

three of the flights were operated carelessly or recklessly because they were made in adverse weather conditions that required "the intervention of Air Traffic Control in locating an airport and providing assistance in landing." Complaint at 2. The law judge sustained all of the allegations.

On appeal the respondent maintains that the law judge erred in concluding that the referenced flights were conducted at a time when the respondent's commercial and medical certificates were legally invalid. He asserts here, as he did before the law judge, essentially that the FAA attorney handling the earlier matter had told him, by telephone, that he could disregard the June 28, 1994 order (see note 4, *infra*) pending her investigation of the respondent's belated challenge to the accuracy of that order's allegation that he had been convicted of an alcohol related offense in the State of Washington.[5] The law judge did not credit respondent's testimony in this regard, and the

(..continued)
predicated on respondent's failure to report to the FAA, or acknowledge on a medical certificate application, an alcohol related motor vehicle action, indicated that he could immediately reapply for a medical certificate, and that while the suspensions were effective on July 17, 1994, the specified suspension periods would not begin until the date of his actual surrender of the affected certificates. The respondent did not appeal that order to the Board. The record does not reflect that respondent subsequently obtained a new medical certificate, and his certificates were not surrendered until December 28, 1994.

[5]Although the FAA attorney who represented the Administrator in the prior proceeding did not testify, she submitted a sworn declaration, dated February 21, 1995, describing her activity with respect to the case, including her written and telephone contacts with the respondent. It does not lend support to respondent's insistence that he had official permission to disregard the June order.

respondent has identified no legal basis for disturbing the factfinder's resolution of the issue.[6]

Notwithstanding respondent's failure to establish that the law judge erroneously weighed the evidence as to whether the effectiveness of the June order had been placed indefinitely in abeyance, the sanction in his case would likely be no different even if respondent had convinced the law judge that he had been given at least a temporary reprieve. This is so because any misapprehension the respondent may have entertained about the effectiveness of the order could not have survived correspondence the FAA attorney sent him in December 1994, which, inter alia, reminded him of his yet-to-be satisfied obligation to surrender his certificates and of the consequences of a further failure to turn them in.[7] However, despite that advice and respondent's relinquishment of his certificates to local police authorities on December 28, respondent operated the aircraft two weeks later on January 12, an act of defiant disregard of the ordered suspension

[6]In his brief respondent requests that we issue a subpoena requiring the FAA attorney to appear and testify in person and to produce any recorded telephone conversations she may have relevant to the earlier case. The request is denied. Respondent should have subpoenaed in advance of the evidentiary hearing the person and documents he now asserts are relevant to his defense. An appeal to the Board is not an opportunity to augment the record with evidence a party could have presented to the law judge, it is an opportunity to contest a law judge's decision on the record before him.

[7]The correspondence, dated December 8, 1994, advised that respondent would be subject to a $1,000 per day civil penalty for each day he failed to surrender his certificates, beginning the day after receipt of the letter. Respondent received the letter on December 28. See Adm. Exh. C-4.

for which he offers no explanation or justification. Since one instance of willful operation during a period of license suspension is sufficient, we think, to demonstrate that the airman lacks the requisite care, judgment, and responsibility required of a certificate holder, see, e.g., Administrator v. Dunn, 5 NTSB 2211 (1987), revocation for the January flight would be the appropriate sanction without regard to the status of respondent's certificates at the time of the earlier flights or consideration of the FAR section 91.13(a) charge alleged as to three of them.

ACCORDINGLY, IT IS ORDERED THAT:

1. The respondent's appeal is denied, and

2. The January 18, 1995 Emergency Order of Revocation issued by the Administrator and the February 22, 1995 initial decision of the law judge are affirmed.

HALL, Chairman, FRANCIS, Vice Chairman, and HAMMERSCHMIDT, Member of the Board, concurred in the above opinion and order.